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June 2, 2004

Larry Norton, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: MUR 5440 Respondent New Democrat Network

Dear Mr. Norton:

On behalf of the New Democrat Network ("NDN") this letter is submitted in response to a complaint filed with the Federal Election Commission by Bush-Cheney '04, Inc. ("Bush/Cheney") and the Republican National Committee ("RNC") ("Complainants"). This complaint does not establish any violation of the Federal Election Campaign Act of 1971, as amended, (the "Act") or Commission regulations by NDN and it does not even meet the minimum standards required by the Commission for further consideration with regard to NDN.

NDN is an independent 527 political organization that promotes a New Democrat agenda. NDN has carefully structured itself to be in full compliance with the Act. One of the ways NDN promotes its agenda is through television ads that do not expressly advocate the election or defeat of any clearly identified candidates for federal office.

The complaint is devoid of any facts or details by which even an allegation of a violation by NDN could be made. For the reasons set forth below, NDN requests that the Commission promptly dismiss this complaint and close this matter, as it pertains to NDN:

- 1. This complaint fails to meet even the minimum standard required by the Commission for further consideration.**

Under the Act and Commission regulations, a complaint, to be sufficient, valid and appropriate for filing and consideration by the Commission, must conform to certain provisions set forth at 11 C.F.R. 111.4(d). Included in those minimum provisions is the following requirement:

- (3) The complaint should contain a clear and concise recitation of the facts which describe a violation of a statute or regulation over

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which the Commission has jurisdiction; ...

In the 10 lines devoted to NDN in the 67 page complaint there are no facts or details describing any violation by NDN of the Act or Commission regulation. Nevertheless, a specific response to the statements included in the one paragraph of the complaint regarding NDN follows:

- a. **“New Democrat Network has run a separate \$5 million television campaign aimed at Latino voters in four states.”**

NDN may run a “separate \$5 million television campaign aimed at Latino voters.” Complainants make this statement but fail to describe how it amounts to a violation of a statute or regulation over which the Commission has jurisdiction. NDN’s ads are created independently, they do not contain express advocacy, and they are not coordinated with any federal candidate or his or her agent. A statement that NDN ran some ads aimed at Latino voters does not provide sufficient basis for a finding by the Commission that there is a reason to believe that NDN violated the Act.

- b. **“This soft money 527 committee has among its advisors Gov. Bill Richardson, who also serves as the chairman of the Democratic National Convention.”**

NDN may have as one of its advisors an individual who wears multiple hats, such as Latino leader, Governor and chairman of a political party convention. Complainants fail to describe how providing advice to an organization amounts to a violation of a statute or regulation over which the Commission has jurisdiction. They do not describe what type of advice would amount to a violation of the Act. They do not even bother to provide an allegation or description of the advice Gov. Richardson provided NDN. Nor do they even make an assertion that the advice was improper in any manner whatsoever. Complainants simply state that Gov. Richardson is one of NDN’s advisors. That statement is not a sufficient basis for finding a reason to believe that there was a violation of the Act.

Commission regulations specifically permit individuals to wear multiple hats during an election cycle while acting in full compliance with the Act. “It is clear that individuals, such as State party chairmen and chairwomen, who also serve as members of their national party committees, can, consistent with BCRA, wear multiple hats, and can raise non-federal funds for their State party organizations without violating the prohibition against non-Federal fundraising by national parties.” Explanation and Justification, 67 Fed. Reg. 49083, (July 29, 2002).

If a member of the national party committee who is also a State party chairman can take off his national party committee hat and solicit non-federal funds while wearing his state party chairman hat, then it is certainly permissible for a Latino who is a state elected official to provide advice to an independent organization that communicates with Latino citizens, even if he also has a third or fourth or fifth hat which he wears when acting as chairman of a political party’s convention.

NDN was established to provide a policy forum for New Democratic leaders. Governor Richardson, as a New Democratic leader, is certainly permitted to participate with NDN on such policy matters. For there to be a reason to believe that NDN violated the Act, the Complainants need to provide something more than "he gave them advice."

c. TMF, MoveOn.org and NDN coordinated in "choosing which media markets to cover."

There is no prohibition under the Act against independent 527 political organizations coordinating with each other. The innuendo that such coordination is somehow impermissible cannot serve as the basis for a finding that there is a reason to believe a violation of the Act occurred when such action is not prohibited by the Act. It is permissible for TMF, MoveOn.org, and NDN to coordinate their media buys in overlapping markets, independently of any campaign or party committee.

On page 27, Complainants suggest that NDN coordinated with the John Kerry for President, Inc. (the "Kerry campaign") by reference to pages 50 through 60 of the Complaint. That section, however, does not include a single reference to NDN! It is devoted solely to the theory that TMF and MoveOn.org must have coordinated with the Kerry campaign simply because they ran ads in the same states. Complainants provide no evidence, nor do they even make the simple statement that NDN's ads ran in the same markets as the Kerry campaign ads.

Moreover, running ads in overlapping media markets is not one of the six conduct standards carefully established by the FEC in the coordination regulations at 11 C.F.R. §104.9(21)(d)(1)-(6). For there to be coordination, there needs to be much more than an overlapping media buy. There is no evidence in the Complaint that any of the actual conduct elements established by the Commission were met by NDN.

The mere observation that an independent organization ran television ads in markets that overlap with a candidate or party's media buy is not a sufficient basis upon which the Commission could find a reason to believe that a violation of the Act occurred. In this case, they do not even make the observation that NDN ran ads in overlapping markets. Before a reason to believe finding can be made against NDN, they should at least be mentioned in the chart of overlapping media buys prepared by Complainants. There is simply no basis in this complaint to support a coordination theory against NDN that merits further investigation by the Commission.

2. NDN has not acted in coordination with Kerry for President or the Democratic National Committee.

NDN has not made any expenditures coordinated with the Kerry campaign or the Democratic National Committee ("DNC"). The FEC established a three-prong test for determining if a communication is coordinated: (1) the communication must be paid for by someone other than a candidate or party committee; (2) the communication must meet a "content standard"; and (3) the interactions between the person paying for the communication and the candidate or political party committee must satisfy a "conduct standard." 11 C.F.R. §109.21. Complainants failed to present any facts or assertions that meet the required conduct standards,

therefore, there is not a sufficient basis for finding a reason to believe that the NDN television ads were coordinated with KFP or the DNC.

3. This complaint provides no factual basis for finding reason to believe.

Finally, this complaint is devoid of any facts that would give rise to a violation of the Act. We respectfully request that the Commission close this matter as it pertains to NDN.

Sincerely,



Lyn Utrecht
James Lamb
Counsel
New Democrat Network

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